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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/526,136	01/31/2006	Kai Hensen	117163.00122	6669
21324 7590 12/08/2010 HAHN LOESER & PARKS, LLP One GOJO Plaza Suite 300 AKRON, OH 44311-1076				
EXAMINER				
HOLMES, REX R				
ART UNIT		PAPER NUMBER		
3762				
NOTIFICATION DATE		DELIVERY MODE		
12/08/2010		ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

patents@hahnlaw.com
akron-docket@hotmail.com

Office Action Summary

Application No.

10/526,136

Applicant(s)

HENSEN ET AL.

Examiner

REX HOLMES

Art Unit

3762

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 January 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/CD)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Response to Amendment

1. Applicant's request for reconsideration of the finality of the rejection of the last Office action is persuasive and, therefore, the finality of that action is withdrawn.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).
4. Claims 1-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nichols et al. (U.S. Pat. 6,266,566 hereinafter "Nichols") in view of Lam (U.S. Pat. 5,953,018) in view of Pless et al. (U.S. Pub. 2003/0144711 hereinafter "Pless").

Regarding claim 1, Nichols discloses an external programming device for an implant that comprises a receiving unit (222), a touch sensitive display (228) with an

actuating unit (226), a switching unit (226), and at least two time-continuous horizontal display positions wherein the first display position is constant (Fig. 9, elements 272B, 274B, 276B; Col. 11, ll. 14-30). Nichols further discloses that the display has a representation window for displaying an ECG (e.g. 278B) and a surface switching element beside the representation window (generally shown on figure 10 below the 270B arrow; Col. 11, ll. 14-30). Regarding claim 5, 7, Nichols discloses that the whole screen is touch-sensitive (Col. 11, ll. 31-36). Nichols further discloses multiple points on the touch-screen that are used to control, switch, and select the waveforms (Figs. 9-10).

Regarding claims 1, 5 and 7, Nichols discloses the claimed invention except for the actuator switching the display from a continuous display to a sweeping display. However, Lam teaches that it is known to use sweeping and continuous displays as set forth in (Col. 4, line 46 to Col. 5, line 15) to provide various means for displaying ECG data. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the display actuator switch as taught by Nichols, with the display modes as taught by Lam, since such a modification would provide the predictable results of having two different display modes for providing the predictable results of allowing the user to switch between continuous and sweeping displays for ECG data.

5. Regarding claims 1, 5 and 7, Nichols in view of Lam discloses the claimed invention except for the programming device being made out of two parts a base device and a handheld device that contains the display. However, Pless discloses a system for

interacting with an implantable device that is comprised a handheld programmer (114) that contains a display and a base docking station (128) to allow for charging and wired communication when wireless is unavailable. The handheld programmer is capable of being connected to or separated from the base docking station (see Fig. 1; Paragraph 60). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the programmer as taught by Nichols in view of Lam, with handheld programmer with base station as taught by Pless, since such a modification would provide the predictable results of a programmer with a handheld display for easy viewing and programming by a physician or patient and a base station to dock the programmer for charging and wired communication.

6. Regarding claims 2-4, Nichols in view of Lam and Pless disclose the claimed invention but does not disclose expressly the way in which the display screen refreshes the data. It would have been an obvious matter of design choice to a person of ordinary skill in the art to modify the programmer/display as taught by Nichols in view of Pless with the left to right continuous refresh, a clear and refresh of the signal on the left hand side, or displayed continuously with a right hand representation, because Applicant has not disclosed that any of the display representations provides an advantage, is used for a particular purpose, or solve a stated problem. One of ordinary skill in the art, furthermore, would have expected Applicant's invention to perform equally well with the continuous display representation as taught by Nichols in view of Lam and Pless, because it provides updated display and analysis of a real-time signal and since it

appears to be an arbitrary design consideration which fails to patentably distinguish over Nichols in view of Lam and Pless.

Therefore, it would have been an obvious matter of design choice to modify Nichols in view of Lam and Pless to obtain the invention as specified in the claim(s).

7. Regarding claim 6, Nichols in view of Lam and Pless discloses the claimed invention except for the switching element being a button beside the display. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the display as taught by Nichols in view of Lam and Pless, with a button beside the display for input since it was known in the art that buttons on the side of the display can be used to input data and control the operation of programmers and to provide the predictable results of a input system that corresponds to the information on the display.

Response to Arguments

8. Applicant's arguments with respect to claims 1-7 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to REX HOLMES whose telephone number is (571)272-8827. The examiner can normally be reached on M-F 9:00 - 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Niketa Patel can be reached on (571) 272-4156. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3762

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/R. H./
Examiner, Art Unit 3762

/Niketa I. Patel/

Supervisory Patent Examiner, Art Unit 3762